IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Single Bench

Criminal Revision No. 122 Of 2006

APPLICANTS :1.Sonu Kumar @ Munna S/o Murari Lal aged about 21 years, resident of Chimiri , District Korba (CG).

2. Narendra Kumar S/o Moti Lal Gupta, aged about 30 years, resident of Badi Bazar , Chirmiri, District Korba (CG).

VERSUS

RESPONDENT : State of Chhattisgarh, through the Station House Officer, Police Station Anusuchit Jati Kalayan Thana, Korba (CG).

MEMORANDUM OF CRIMINAL REVISION U/S 397 READ WITH SECTION 401 OF Cr.P.C.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Crrev. 122/2006 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	28.02.2006 Applicants Sonu Kumar @ Munna and Narendra Kumar by Shri Shailendra Dubey, Advocate. Shri U.K.S. Chandel, learned Panel Lawyer for State/respondent. Learned counsel for the applicants submits that he does not want to press M.Cr.P. No. 389/2006 for grant of stay. As prayed, application M.Cr.P. No. 389/2006 is dismissed as not pressed. With the consent of the parties, this matter is finally heard today at the stage of admission. Brief facts are that the applicants are facing trial under Section 376 (2) (g) of I.P.C. before the Special Sessions Judge (Atrocities) Korba in Special Case No. 08/2004 on 12.12.2005. Shri Shailendra Dubey who had been engaged by applicant Narendra Kumar had not appeared before the Court on 12.12.2005 when the prosecutrix Phul Kunwar P.W. 10 and another witness Ind Kunwar P.W. 11 were examined by the prosecution. Both these witnesses were cross-examined by one Advocate Shri B.P. Pandey. On 27.12.2005, an application was filed by Shri Shailendra Dubey, Advocate under Section 311 of Cr.P.C. praying for recalling the above witnesses for further cross-examination on the ground that Shri B.P. Pandey had not sought No Objection from him for appearing on behalf of Narendra Kumar. Shri Shailendra Dubey, learned counsel for the applicants had contended before the trial Judge that Shri B.P. Pandey, a junior Advocate did not have copies of challan and was not able to effectively cross-examine the witnesses and therefore in the interest of justice and a fair trial, an opportunity should be given for recalling the witnesses mentioned above for further cross-examination. The learned Sessions Judge	

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rejected the application on the ground that Shri B.P. Pandey had cross-examined the two witnesses mentioned above at length and recalling the aforesaid witnesses for further cross-examination may seriously jeopardize the trial and therefore it was not in the interest of the justice to recall the above mentioned witnesses.

Having considered the rival submissions, this revision deserves to be allowed. Both the applicants herein were facing trial for a serious offence under Section 376 (2) (g) read with Section 34 of I.P.C. It was mentioned before the learned trial Judge that the original counsel Shri Shailendra Dubey appearing for accused Narendra Kumar had not given "no objection" in favour of Shri B.P. Pandey for representing applicant Narendra Kumar.

Under Section 311 of Cr.P.C., the Court has ample powers to recall any person who has already been cross-examined, if this appears to be essential for the just decision of the case. Since the counsel engaged by applicant Narendra Kumar was not present on 12.12.2005, it was just and reasonable to afford an opportunity to Shri Shailendra Dubey Advocate for accused Narendra Kumar to further cross-examine the prosecutrix Phul Kunwar P.W. 10 and Ind Kunwar P.W. 11 after recalling those witnesses. The reasons mentioned by Sessions Judge for refusing to recall the aforesaid two witnesses lack justification. It appears necessary for just decision of the case that an opportunity should be given to Shri Shailendra Dubey Advocate for accused Narendra Kumar to further cross-examine the above mentioned two witnesses.

The revision is allowed. Order dated 17.01.2006 passed by Sessions Judge Korba is set aside. The Sessions Judge Korba shall now recall Phul Kunwar P.W. 10 and Ind Kunwar P.W. 11 for further cross-examination by

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	Shri Shailendra Dubey Advocate on any further date to be fixed. It is made clear that if, upon the date so fixed, the defence counsel Shri Shailendra Dubey is not available or unable to cross-examine the aforesaid witnesses, no further opportunity shall be given for the said purpose. With these observations, the revision is disposed of. Sd/- Dilip Raosaheb Deshmukh Judge	

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